

## **REMARKS**

Claims 1-8 are pending in this application. The following remarks are made responsive to the Office Action mailed March 6, 2006.

### **Claim Objections**

Claim 5 was objected to for use of the term “lowest” in its lines 10 and 12. The office action stated “the term ‘lowest’ should be changed to –lower—because there are only two error rates to compare.” However, claim 5 is not limited to “only two error rates to compare.” Although only two error rates are required for comparison in claim 5, more than two error rates may also be compared and still be covered by claim 5. If an activity performs all the elements of claim 5, compares three error rates, and selects a lowest error rate from the three, claim 5 would still cover this activity in line with the general principles of claim construction. Therefore, although “lower” may appear to be better English, “lowest” is more in keeping with the scope of the claim. It is respectfully requested that the objection be removed.

### **Claims 6 and 8**

Claims 6 and 8 were rejected under 35 U.S.C. § 102(b) as being anticipated by Spruit et al. (US Patent No. 5,617,399) hereafter “Spruit.” Claims 6 and 8 are patentable over Spruit.

Each and every element of a claim must be taught by a reference in order for that reference to anticipate the claim. As indicated by its title and abstract, Spruit calibrates the radiation intensity of a beam for writing on a record carrier. “When information is recorded, the servo track 4 is scanned by the radiation beam 15 whose intensity is set to a

write intensity which is sufficiently high to heat the part of the recording layer 6 being scanned by radiation beam 15 close to the Curie temperature of the material of the recording layer 6.” Col. 5, lines 37-42. The problem in Spruit is described as follows at its col. 7, lines 12-16:

“All this means that the variation of the optimum write intensity is so large that there can be no guarantee that with a fixed setting of the write intensity, this intensity will lie in the write intensity window of the record carrier in which window the BER value is low.”

The write intensity window of the record carrier refers to the “radiation-sensitivity” of a record carrier. (Col. 6, lines 63-67). Due to methods of making the record carrier layers such as sputtering, radiation sensitivity of record carriers varies. (Col. 6, lines 63-67).

Spruit provides “a description of a method in which the optimum write intensity can be reliably and simply set,” (Col. 7, lines 17-18) and its Figure 5 provides a description of its preferred embodiment (Col. 7, lines 18-21).

Spruit does not teach or suggest at least in claim 6, “writing a data set, with a write timing...” or “adjusting the write timing” because Spruit is concerned with optimizing the radiation intensity of the write beam which it refers to as the write intensity. This is a physical characteristic of the writing process quite distinct from “write timing” which is a function of time. Spruit does not disclose or suggest anything about the problems of imprecise spatial positioning caused by timing errors introduced by clocks and signal path delays, and certainly does not disclose or suggest solutions based on “write timing.” For the same reasons, Spruit does not teach or suggest at least in

claim 8, "writing a data set, having a known error rate as a function of write timing" or "comparing the read error rate to the known error rate as a function of write timing to determine a write timing error." Therefore, claims 6 and 8 are patentable over Spruit.

#### **Allowable Subject Matter**

Claims 1-5 and 7 were identified in the office action as allowable over the prior art.

#### **Conclusion**

In light of the arguments presented above, pending claims 1-8 are in condition for allowance, and applicant respectfully requests a notice of allowance.

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